IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.223 OF 2007

WITH

CIVIL APPLICATION NO.852 OF 2007

Mahadeo Maruti Nanaware,
Since deceased through his heirs
and Legal representatives,
1A.Vishwas Mahadeo Nanaware & Ors. ...Appellants

Versus

Jeevan Baban Nanaware ...Respondent

.....

Mr.Dilip Bodake for Appellants.

None for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 17, 2007.

P.C.

1. Heard Counsel for the parties.

2. I see no reason to interfere with the concurrent view taken by the Courts below. The argument canvassed on behalf of the Appellants, to my mind, is nothing but inviting the Court to reappreciate the evidence on record to form a

different opinion than the one arrived at by the Appellate Court. That is not the scope of interference in Second Appeal.

3. According to the Appellants, the Will in question has not been proved in evidence. Only one attesting witness has been examined by the Plaintiffs. Merely because only one attesting witness is examined, that cannot be the basis to discard the Will. The two Courts below have analysed the evidence on record and after considering all aspects of the matter have formed concurrent view that the evidence adduced by the Plaintiffs was trustworthy and credible. That concurrent finding of fact needs no interference.

4. Counsel for the Appellants would then rely on the decision of the Apex Court in the case of **Kalyan Singh v. Smt.Chhoti & Ors. reported in AIR 1990 SC 396** to contend that the circumstances referred to in the said case are almost identical to the case on hand, for which reason, the Courts below ought to have held that the Will in question was suspicious and not a genuine document. The

observations in that case are obviously in relation to the fact situation of that case. The Court went on to positively find about the credibility of the witnesses and the truthfulness of their evidence. The Court also considered attending circumstances to hold that the Will in that case was not a genuine document.

5. In the present case, Courts below have considered all the relevant aspects of the matter including the grievance of the Appellants about the suspicious circumstances and have taken view which cannot be reversed by reappreciating the evidence on record in exercise of Second Appeal.

6. Counsel for the Appellants would then rely on the decision reported in **2003(3) All.M.R. 638 in the case of P.Ramchandran Nair vs. Smt.Suparna Tapan Das,** once again, to buttress the submission that the Will in question is not a genuine document and there are attending circumstances to take the view that the Will was not executed in the manner stated by the Plaintiffs.

7. All these aspects have been considered by the Courts below in detail. After analysing the evidence on record, the Court has found that the Defendant, besides his bare words, has not adduced any evidence to support his claim. Whereas, Plaintiffs' witness whose evidence was truthful and reliable have explained the circumstances in which Will came to be executed. The case so stated by the Plaintiffs witnesses have found favour with the lower Court.

8. Suffice it to observe as is mentioned earlier, that the attempt of the Counsel for the Appellants was to persuade this Court to reappreciate the evidence on record to take a different view that the one taken by the lower Court. That cannot be the basis to interfere in the Second Appeal.

9. As no substantial question of law arises for consideration, dismissed.

A.M.KHANWILKAR, J.